

1 MR. HOGAN: Good morning, and thank you. I'm Philip  
2 Hogan, I'm an Ogallala Sioux from South Dakota. We are the tribe  
3 of Red Cloud and Crazy Horse. Wounded knee is on our  
4 reservation. It has been referred to a number of times here,  
5 talking about some of the contrast that exists in Indian gaming  
6 experience, and the stark poverty that exists some places, and  
7 unfortunately Pine Ridge is one of those places.

8 Prior to coming to the National Indian Gaming  
9 Commission, which I joined in December of 1995, I had been the  
10 United States Attorney for the District of South Dakota. I was  
11 the U.S. Attorney there for about ten years.

12 And so I come from a strong law enforcement  
13 orientation, and I think that probably was the reason I was  
14 selected to serve on the National Indian Gaming Commission.

15 I had the privilege of being in Las Vegas last month  
16 when Chairman James kind of came out for the first time and gave  
17 some insight as to where at least she might be going, and she  
18 invited those of us that wanted to be sure you were going to get  
19 it right, to provide additional information.

20 And so I sat down and wrote her a letter. I think maybe  
21 you now have a copy of it. I tried to keep it short, but I  
22 couldn't keep it under eight pages. It is something of an exit  
23 interview from somebody that served on the National Indian Gaming  
24 Commission for three years.

25 I have probably been on more reservations where they do  
26 gaming, and in more tribal facilities than almost anybody else in  
27 this country in the last three years, and I have learned a great  
28 deal about that.

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1 In the letter I wrote to Chairman James I attempted to  
2 explain where we were when I got there, where we've come, and  
3 where we are going. And Mr. Lanni, or Mr. Bible I believe,  
4 enquired would it be admitted that the National Indian Gaming  
5 Commission had been under funded or understaffed, and I certainly  
6 think we were.

7 I think we are on the right track now, and I think that  
8 by assessing the fees that we are able to con class II and class  
9 III gaming, bingo and the casino gaming, we are going to have a  
10 budget that is going to permit us to adequately do our job.

11 We are playing catch up right now, we opened our first  
12 satellite office, we are staffing that office with a field  
13 service team, we will be having other satellite offices in the  
14 northwest and the southwest, probably in Oklahoma, probably  
15 California.

16 But we are coming on line, and we are going to, with  
17 those additional resources, do what is required and demanded of  
18 us in the Indian Gaming Regulatory Act.

19 In terms of that letter that I wrote to you, I have  
20 supplemented that with a sheet that has been distributed to you  
21 today that has five points, five recommendations that I would  
22 like to make to you today.

23 And the first one is that you recognize the true extent  
24 of the regulation of Indian gaming and in that that you take into  
25 consideration that each tribe has its own tribal gaming  
26 regulatory entity.

27 And there is a difference between what a tribe's  
28 regulatory entity does and what, for example, the Nevada Gaming  
29 Commission or Control Board does. Nevada is a model that has been

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1 followed throughout gaming, and throughout Indian gaming in terms  
2 of trying to know what to look for, who to have look for it, and  
3 how it works.

4 But Nevada has the responsibility of looking at  
5 literally hundreds of gaming operations, and I think they do it  
6 pretty well. Tribal gaming Commissions only have to look at, and  
7 only do look at their own operations.

8 They are looking at a singular operation, or in some  
9 cases a handful of operations, and so they are focused. The  
10 proportionate amount of resources that they dedicate, not only  
11 alone, but together with the state, if they are operating  
12 pursuant to a tribal gaming compact, they are looking at that  
13 operation, and I think by doing so it is true to say they are  
14 more regulated than any other segment of gaming.

15 Now, the incentive that a tribal gaming commission has  
16 is a little different than the incentive of the Nevada Gaming  
17 Commission, or the New Jersey Gaming Commission, or whatever.

18 Nevada and New Jersey want to make sure that everybody  
19 is playing fair and square, no doubt about that. But as Dr.  
20 Moore observed here, when he was fixing those gas pumps to make  
21 sure that they just pump five gallons when it said five gallons,  
22 and the state came out there to make sure he got it right, the  
23 state was worried about that gas tax they were going to get off  
24 of each one of those five gallons.

25 Well, that is the way it is in part with the Nevada or  
26 the New Jersey Gaming Commission. That is they want to be out  
27 there and make sure they are doing it right at Bellagio, or the  
28 MGM Grand, or whatever, because in part Nevada is going to get a  
29 tax off of that.

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1 Well, the greater incentive that the tribal gaming  
2 commission has is all of that revenue is going to the tribal  
3 government to meet those needs that the tribe has. And believe  
4 me they are great.

5 And in some places, of course, it has worked much  
6 better than it has in others. At the Mashantucket Pequot  
7 reservation, they have a small membership, a tremendous market,  
8 lack of competition, they are doing very well.

9 At Pine Ridge, where I come from, we are out in the  
10 middle of the Badlands. We have a little facility. I think  
11 reference was made that it was in a double-wide trailer house.  
12 It isn't anymore, we have moved into a tent. We moved from a  
13 trailer house to a tent..

14 But we employ 100 people there, 95 of those people are  
15 tribal members. Most of those 95 didn't have any jobs before,  
16 and the problem is we just don't have enough market to make  
17 gaming be the economic miracle that it has proved to be some  
18 places.

19 But in any event, our tribal gaming commission at the  
20 Ogallala Sioux tribe is very seriously interested in how things  
21 work at that Commission, because they know that all of those  
22 dollars are going to their employer, the tribe.

23 Now, in addition to each of these gaming commissions  
24 that exist on each reservation, then along comes the National  
25 Indian Gaming Commission. We are looking over their shoulder. I  
26 think we lend some objectivity to what they are doing..

27 With these minimum internal control standards that we  
28 recently promulgated, we are going to get better, we are going to  
29 get stronger, and we are going to be in enough places, enough of

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1 the time, with these new field service teams to be able to look  
2 you in the eye, or Senator Reid, or whoever, and say, how are  
3 things going out on the reservation as far as gaming goes, and we  
4 can say things are going well, because we know, because we have  
5 been there.

6 We set the guidelines, they make their own rules, and  
7 they get there.

8 Chairman James you enquired if we had a stack of the  
9 state regulations here, and the tribal regulations here, how  
10 would they compare? Well, it depends on part on where we go to  
11 look.

12 If you went to the Cheyenne River Sioux Reservation in  
13 South Dakota, that stack wouldn't be very big, because they only  
14 play bingo there. It is practically a charitable operation. But  
15 their rules for bingo would be good, and they would be thorough.

16 If you set the Nevada regulations in one place, and the  
17 Mohegan regulations from up in the Northeast there, those piles  
18 would be very close to the same size, because they all run a big  
19 operation, and they all have to do the same kind of things.

20 The Indian stack might be a little higher, because in  
21 addition to doing what the tribe says they have to do, in  
22 conjunction to what they have agreed to the state requiring that  
23 they do, you have the federal stack of regulations as well.  
24 Those I sent to you with my letter.

25 And those tribal regulations then have to meet or  
26 exceed what we, the feds, have said. So that is the arrangement.

27 Now, when I became the U.S. Attorney in South Dakota, I  
28 took an oath that I was going to uphold the Constitution, and the  
29 laws of the United States. The main thing I did, in my ten years

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1 of being United States Attorney in South Dakota, was prosecute  
2 indians. Prosecute indians for violent crimes, homicides, rapes,  
3 assaults, that they committed against other indians.

4 And it is not a very fun job, but because of the  
5 poverty, because of the substance abuse and so forth, the despair  
6 that exists on those reservations, there is a lot of senseless  
7 violence. But we were trusted to do that.

8 Now, we've got Indians watching Indians in connection  
9 with the accounting for and the regulation of tribal gaming on  
10 the reservations. But in my capacity as a member of the National  
11 Indian Gaming Commission, I took the same kind of oath as I did  
12 as the United States Attorney, to uphold the Constitution, and to  
13 uphold the laws.

14 And I don't think the fact that I'm an indian, looking  
15 at what those Indians are going to do, is going to lessen my  
16 regard for them being squeaky clean, and making sure that those  
17 dollars get to the right places, and that the customers are  
18 treated fairly.

19 And the same, I think, can be said about those tribal  
20 gaming regulators that are looking at the tribe's operation,  
21 sometimes with a management contract, sometimes otherwise.

22 So I think the state of Indian gaming is headed in the  
23 right direction. Is it perfect right now? Probably not, there  
24 are probably some soft spots out there.

25 The National Indian Gaming Commission, however, has  
26 more than doubled its budget. We had about a three million  
27 dollar core budget, we are now moving up to eight million  
28 dollars. That doesn't, of course, all come on line at one time,  
29 but we are getting there.

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1           And with these new minimum internal control standards  
2 we are going to be every place that we need to, every audit that  
3 we get will have to inform us whether or not their operation  
4 complies with these minimum internal control standards, and we  
5 will be out in the facilities checking to see first-hand if that  
6 is true.

7           So I urge you to fully understand, fully grasp this  
8 regulatory structure that exists in Indian country, and for  
9 Indian gaming, pursuant to the Indian Gaming Regulatory Act.

10           The second bullet here, the second recommendation is,  
11 don't subject Indian gaming to any special or higher regulatory  
12 standards than state or commercial gaming.

13           Now, we questioned, you know, should Indians, can we  
14 trust Indians watching Indians to make sure all the dollars are  
15 counted? Well, in South Dakota we have a state lottery. And  
16 that state lottery is run by the state, and we have South  
17 Dakotans watching South Dakotans to make sure that all of those  
18 dollars are accounted for, and nobody really questions that.

19           I think that same integrity exists within the Indian  
20 gaming arrangement. So just because Indian gaming is Indian, I  
21 don't think it ought to be held to different standards, or put on  
22 a different chart than commercial gaming or state gaming in the  
23 country.

24           The Seminole case, and the impasse that has been  
25 created with respect to where do tribes go if they can't get a  
26 compact negotiated in good faith, or at least that is their  
27 allegation, and of course that has created all kinds of  
28 litigation, all kinds of confusion, concern, hard feelings in  
29 places like California, Florida, Alabama, and a few other places.

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1           If I had to say what is the priority, what is the  
2 problem to solve to help straighten out, if there are problems in  
3 Indian gaming, that is the problem we have to straighten out.

4           Now, that can be done in a couple of ways. The United  
5 States could start initiating this litigation that the tribes  
6 have been unable to commence. The Indian Gaming Regulatory Act  
7 could be amended to come up with a vehicle that would give the  
8 tribes some recourse.

9           The Secretary could go forward with these procedures,  
10 but there has to be a vehicle to straighten these things out. At  
11 NIGC we feel terrible when we observe a situation like Florida,  
12 or California, when there is uncompacted class III gaming, and we  
13 are law enforcement regulator people, and we would like to have  
14 everybody play by the rules.

15           We have to take that situation in the context in which  
16 it arose, or in which we find it. And the U.S. Attorneys with  
17 whom we work, necessarily, in terms of their enforcement of the  
18 Johnson Act and so forth, and the litigation, the patchwork of  
19 cases that presents that situation, the fairness doesn't dictate  
20 that in some of those situations we go in and issue a closure  
21 order.

22           And it is being worked out. In California, through the  
23 help of the electorate, to the help of the process, I think that  
24 is headed in the right direction, and I expect it will be  
25 resolved elsewhere as well.

26           But if there is a quicker fix to the Seminole problem,  
27 that will make our job much easier, and I think it would make  
28 everybody a lot happier.

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1           The third recommendation here I refer to a national  
2 license for those who manage tribal gaming facilities or consult  
3 with respect to the management of tribal gaming facilities, or  
4 those who are vendors at tribal gaming facilities for gaming  
5 equipment, gaming supplies.

6           I have observed the review and approval process for  
7 management contracts under the Indian Gaming Regulatory Act at  
8 the National Indian Gaming Commission.

9           If you weren't familiar with that, the Act provides  
10 that if a developer comes along and says to the tribe, boy, have  
11 we got a deal for you, let us build and run your casino, and we  
12 will both make a lot of money, before they can do that, that  
13 agreement has to be submitted to the National Indian Gaming  
14 Commission, and we have to review and approve it, to make sure  
15 that the tribe is getting a fair shake on the thing, that they  
16 aren't entering into an agreement with a bunch of crooks, and  
17 that sort of thing.

18           The problem is that is a very laborious process, and it  
19 is difficult for tribes to take advantage of those economic  
20 windows of opportunity that present themselves. And there has to  
21 be a better way to do that, I think.

22           And I think if we would -- and as a result of that,  
23 some tribes are entering into consulting agreements that really  
24 are management contracts, and they are trying to make an end run  
25 around that review and approval process.

26           That is done, in some cases, just to speedup the  
27 process, and in some cases the bad guys are making those deals,  
28 and they couldn't pass muster if they went through the process.

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1           So I think if we had an arrangement whereby everybody  
2   that is going to manage or consult with respect to these things,  
3   went to the INGC and got a license, that would expedite the  
4   process, and maybe address some of these other situations.

5           With respect to licensing the vendors and suppliers,  
6   right now if you are a slot machine vendor, and you want to sell  
7   slot machines in Indian country, and there are 180 tribes out  
8   there, you've probably got to fill out 180 applications, have 180  
9   back ground investigations done, and they will be at varying  
10   levels.

11           Most of these vendors, you know, the heavy hitters have  
12   licenses in Nevada and New Jersey, and so forth, and they are  
13   going to be squeaky clean when they get there. But if there  
14   could be a national license for these vendors and suppliers,  
15   which the tribes could choose to honor if they wanted, or ignore  
16   it if they choose, I mean, who are we to tell the tribe you have  
17   to do it our way, they are tired of having people tell them how  
18   they do that.

19           But at least have that vehicle so that they can say,  
20   you know, whether it is the International Gambling Technology, or  
21   whoever, if they get that national license, that will expedite  
22   the process.

23           And finally it is kind of administerial thing, the  
24   Indian Gaming Regulatory Act is not clear with respect to the  
25   Chairman delegating his authority with respect to some of our  
26   enforcement actions.

27           As we grow, as we have field service teams and  
28   satellite offices that have to do on the spot enforcement, we  
29   need it crystal clear that they can take action to close

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1 facilities, or issue notices of violation, so that we don't have  
2 to be impaired by the bureaucracy to get some of that done.

3 So that is a small mechanical kind of thing that we  
4 would ask that Congress take into consideration if and when they  
5 choose to next amend the Indian Gaming Regulatory Act.

6 And we ask that you think about recommending that, as  
7 you move in that direction.

8 I've been sitting here biting my tongue, and there are  
9 a million other things that I probably should say, and could say.  
10 But I will finish here.

11 I find the process fascinating. And I'm not sure you  
12 ought to be going down the direction of labor law, or  
13 environmental law, and so forth. You are here to do gaming.

14 But I think if you don't talk about labor law, and  
15 environment, and so forth, you are not going to get away from the  
16 paradigm that you maybe came herewith, with respect to tribal  
17 sovereignty, and the way Indian tribes work.

18 You know, never forget that the tribes predated the  
19 United States. And they were here first, and the United States  
20 didn't give them anything. And they weren't defeated. There  
21 were a lot of wars, and there were a lot of battles, and  
22 sometimes the Indians got the short end; that unpleasantness out  
23 at Little Big Horn, where the Ogallalas, where we came out on  
24 top.

25 But in any event the thing was settled by an agreement,  
26 by a treaty, by a resolution. And there was recognition there.  
27 The United States, yes, recognized the tribes, but the tribes  
28 also recognized the United States. They did it on a government  
29 to government basis.

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1 And this tribal government that was here first has the  
2 right to set their own rules. And if they don't want to have a  
3 balance of power kind of arrangement, they don't have to.

4 And the United States Constitution doesn't apply to  
5 tribal governments. Now, that is not maybe something we agree  
6 with, or whatever, but this isn't the place you change that.  
7 This is where you recognize the way things are, and you deal with  
8 it.

9 And I think once you have that paradigm adjustment you  
10 will be more successful in understanding some of the intricacies  
11 and the needs in Indian country.

12 I've said my piece.

13 COMMISSIONER LOESCHER: Thank you very much, Mr. Hogan.  
14 I want to say we really appreciate your testimony, and I received  
15 a copy of the material that was sent to Chairman Kay James with  
16 all of its attachments regarding the chronology of the  
17 development of IGRA, and the regulations, and the program that  
18 you have, and I have asked that our dear Chairman, Dr. Moore, and  
19 Mr. Wilhelm, and I have agreed that we would like to identify  
20 that material, include it in the record, and use it possibly as  
21 part of our findings.

22 And we appreciate the work that you have given us and  
23 the outline that is included there, and I wanted to express that  
24 as our appreciation for your contribution to this Commission.

25 I would like to ask you a couple of things. As a  
26 member of the National Indian Gaming Association I know that you  
27 and the Commissioner are responsible for performing reviews and  
28 making determinations between whether specific games are  
29 classified as class II or class III games.

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1           What activity, as the Department of Justice, exercise  
2 in this area of review and the determinations between class II  
3 and class III gaming operations?.

4           MR. HOGAN: Well, not infrequently a vendor of a gaming  
5 machine, or some new game, or a tribe that wants to play that  
6 game in their facility, maybe it is a class II facility where  
7 they can't do class III gaming, will write to the National Indian  
8 Gaming Commission and say, we want to do this electronic bingo  
9 game, can you tell us if it is a class II or class III game.

10          Now, there isn't anything specifically in the Indian  
11 Gaming Regulatory Act that directs us, or requires us, or  
12 authorizes, or prevents us from offering an opinion on it. But  
13 obviously we have to have an opinion sometime, because if they  
14 are a class II tribe, are doing a class III game that they  
15 otherwise shouldn't be doing without a compact, we ought to take  
16 enforcement action.

17          And so we think it is better to tell them upfront, yes,  
18 it is class II or it is class III, rather than go out and do it  
19 the other way, that is, try and close them down, or forfeit their  
20 machines, or those kinds of things.

21          So we try to respond to as many of those difficult  
22 decisions as we can. But we don't do it in a vacuum, because the  
23 Johnson Act, which I expect you've heard about and talked about  
24 here, that talks about the illegality of slot machines, unless  
25 and until there is a state arrangement, or a class III compact  
26 arrangement, they do their own thing.

27          And so sometimes we find that we are at cross purposes  
28 with our own Justice Department when we make a decision that a  
29 device or a game is class II, and either they as the main Justice

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1 in Washington, D.C., or a U.S. Attorney out in some district  
2 decide she is going to prosecute a tribe for utilizing a game or  
3 device that NIGC has already said is class II.

4 And so there is an instance where you've got the  
5 government that ought to be speaking with one voice is at cross  
6 purposes. And we try to regularly confer with the Department of  
7 Justice, we meet with U.S. Attorneys that are involved in Indian  
8 country, but sometimes that communication breaks down.

9 And it would probably be in a perfect world, a better  
10 situation if it was crystal clear that there was one group that  
11 made that one call as to what those devices are. Then the tribes  
12 could go forward, the vendors could go forward, without being at  
13 risk, without having to go to some shady guy who may or may not  
14 know what he is doing, or what he is talking about and get a  
15 device.

16 And I think the industry would be stronger and cleaner,  
17 and there would be less grief, and less difficulty among a couple  
18 of federal agencies. So that is a problem, we keep working on  
19 it, but we haven't solved all of those aspects.

20 COMMISSIONER BIBLE: Didn't you propose some  
21 regulations that define some devices as class II, and were  
22 rejected by your own Commission? He was an individual Commission  
23 member?.

24 MR. HOGAN: I was probably the champion of revisiting  
25 the definition of class II as it exists in our regulations now.  
26 Under Chairman Tony Hope the regulations were adopted that define  
27 class II and class III, and that regulation defining class II  
28 bootstrapped the Johnson Act definition of gaming devices into  
29 that definition.

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1 I think that went beyond what the Indian Gaming  
2 Regulatory Act required.

3 COMMISSIONER BIBLE: What we are talking about here,  
4 really, is scope of gaming questions, as to what kind of devices  
5 can be deployed in which jurisdictions. And, clearly, if they  
6 can get a device classified as class II, they don't have to have  
7 a compact with the state, as I would understand the situation.

8 Am I right in my predicate?.

9 MR. HOGAN: Yes, that is exactly right. In Oklahoma  
10 they have not been able to negotiate compacts, so they do just  
11 class II. And they want to be as competitive as they can, so  
12 they want to employ the technology that is permissible.

13 COMMISSIONER BIBLE: So if you classified all the  
14 devices, for instance, in the state of California as Class II  
15 under Commissioner Loescher's proposal, by magic wand all of that  
16 problem would disappear over there?.

17 MR. HOGAN: Well, you know, we are bound by the  
18 definitions of class II and class III gaming in the Indian Gaming  
19 Regulatory Act.

20 At least from my perspective, the National Indian  
21 Gaming Commission went too far in the wrong direction when they  
22 further refined those definitions.

23 COMMISSIONER BIBLE: They are too restrictive?.

24 MR. HOGAN: Yes, I think that the technology that was  
25 envisioned, or that ought to be permissible for bingo games, for  
26 example, is restricted by the inclusion of some aspects of this  
27 Johnson Act definition.

28 COMMISSIONER BIBLE: I think at least I would agree  
29 with some part of your question, I just think that the agency

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1 that makes an interpretation you and I probably disagree on. I  
2 would think the Department of Justice would be the appropriate  
3 agency to make the determination.

4 COMMISSIONER LOESCHER: Thank you. I would like to  
5 explore with you a question that Dr. Moore and Mr. Wilhelm and I  
6 have gone over, and over, and over again for months all across  
7 America.

8 We have received testimony from tribal leaders, very  
9 good testimony, about what they do in each of the tribes with  
10 their revenues that they make from gaming.

11 But they keep looking at me saying Bob, give me a piece  
12 of paper that shows where the money goes. And I keep saying,  
13 well, they have a law that says they have to spend their money  
14 this way for tribal governmental purposes, and also other social  
15 and economic purposes, and they represent that to you.

16 But then when we try to get information we don't  
17 understand why we can't get it, or what the function is with  
18 regard to the law, and then how tribes report, and then there is  
19 the BIA overall funding mechanisms, and how they account and  
20 adjust for revenues, and offsets, and what not.

21 Could you give us a short review of how you see this  
22 aspect of the law?.

23 MR. HOGAN: Yes, I will try to do that. There are at  
24 least two aspects about tribal gaming revenues that would be of  
25 interest here.

26 First of all, how much money did the tribal gaming  
27 operation make, and then where did those gaming revenues go.

28 Under the Indian Gaming Regulatory Act each tribe  
29 annually is required to have done an independent certified audit

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1 that comes to the National Indian Gaming Commission. That audit  
2 ought to tell us, and we think it does for the most part, how all  
3 of the dollars that came in the slot machines or on the tables,  
4 or in the door, so to speak, where they went, and how much of  
5 them ended up in the bank account so it was available to transfer  
6 to the tribe.

7 Those audits are proprietorial in nature. We are  
8 prohibited by the Indian Gaming Regulatory Act, Privacy Act, and  
9 some other, the Bank Secrecy Act, I really don't know the  
10 citations of all the acts, but we can't tell anybody or everybody  
11 that comes in the door, here, take a look at this audit.

12 I think that in some instances the Indian gaming  
13 community might be better served if some of that information  
14 could be available, but as Chairman Hill has observed, there is a  
15 real distrust as to how some of that information will be used.

16 CHAIR JAMES: Can you answer, let me interrupt for a  
17 second. This Commission had made errors for that very audit  
18 information, and I would like to get an update, for the benefit  
19 of the Commission as to where we are on that request. Either of  
20 you can chime in here.

21 MR. HOGAN: Well, you may be better informed than I.

22 DR. KELLY: I will start the process. But if you  
23 wouldn't mind, Madam Chair, could I also speak to another issue?  
24 Just to set the record straight, it is an important issue because  
25 I think both Mr. Hogan and Mr. Rogers referenced this term  
26 defeated nations, and I want it to be clear for the record we in  
27 no way use that term to refer to Native American tribes.

28 I think Chairman Hill will agree that our  
29 conversations, our dialogue, have been fully respectful, and that

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1 the terms we use are tribal nation, or sovereign tribes, or  
2 sovereign nations.

3 Just for the record, that term was used in a white  
4 paper, and the white paper had a historical section. The  
5 historical section noted that in the 1700s the Continental  
6 Congress used that term.

7 And the only reason we noted that was because it is  
8 important, as you track the evolution of Constitutional Law,  
9 because that apparently was the starting point. That term led to  
10 the concept of sovereign dependent nation, which was then  
11 important in the development of the Constitutional Law.

12 So just for the record, that is not a term that we use,  
13 or would consider using.

14 But if I could turn to the other issue, or the --

15 MR. ROGERS: One point of clarification. Correct me if  
16 I'm wrong, Mr. Kelly. You said you will not -- you are not  
17 willing to use, or have not used?

18 DR. KELLY: No.

19 MR. ROGERS: Well, then I have a copy of the Web site,  
20 I printed off your initial draft document.

21 DR. KELLY: Yes.

22 MR. ROGERS: And what disturbed us is when we saw the  
23 reference with no citation, no reference, and it was the tone of  
24 it, where we were referred to as, someone referred to us as  
25 nothing more than mere private associations.

26 When you take that defeated nations, and you also put  
27 that, and the website is available to everybody in the United  
28 States and the world. That is what really -- and that was your  
29 initial draft --.

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1 DR. KELLY: But, please, the Web site, you are  
2 referring to a white paper that was generated to give a  
3 historical background and overview of Native American Gambling,  
4 and that was a reference to the Continental Congress in the  
5 1700s, not to our point of view.

6 MR. ROGERS: But that should have been made apparent on  
7 your website which referenced defeated nations.

8 DR. KELLY: I thought it was. If it wasn't, my  
9 apologies.

10 MR. ROGERS: It was not, I have a copy of the Web site,  
11 because I printed it off and had a heart attack.

12 DR. KELLY: Well, I can assure you the intention was it  
13 was simply of historical note.

14 MR. ROGERS: That sounds like it can be corrected.

15 DR. KELLY: So be it. Let me turn to the other issue,  
16 the audits.

17 We have sent a letter to Penny Coleman, I believe in  
18 September, requesting -- I believe the letter was from Chairman  
19 James, it was on behalf of the Commission, requesting that this  
20 Commission be allowed to review the information that you have,  
21 the audit information that you gather every year on Native  
22 American gambling facilities.

23 We were invited to come present that request face to  
24 face, and did so, I think it was late September, early October.  
25 We met with a number of people from NIGC, Chairman Monty Deal was  
26 there, the Chief of Staff was there, others were there.

27 And we, at that point, at that time made very clear  
28 that we are a federal agency, as the NIGC is a federal agency,

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1 and that we could fully respect the need for confidentiality of  
2 that information.

3 That was the point that was raised, initially, that was  
4 proposed as a reason why that information couldn't be shared. We  
5 pointed out that we could fully respect the confidentiality of  
6 that information, and that the Commissioners had decided that  
7 this would be very helpful in their task, with which they have  
8 been charged, so that if they could see that information they  
9 could, in fact, do the job that they have been tasked to do.

10 We left that day, and sent back another letter to the  
11 NIGC just reiterating what we had stated, even offering that if  
12 it would help we would be glad to send staff to the NIGC to look  
13 over the audit information so that that information wouldn't have  
14 to be transported.

15 In other words, we were willing to do whatever it took  
16 to make this request doable. We then subsequently received a  
17 final note from NIGC stating that in your view, I believe, that  
18 this was simply not information that could be provided, and that  
19 is where the issue stands.

20 MR. HOGAN: There was, I believe, some categories drawn  
21 and particular tribes placed in those categories showing general  
22 levels of revenue that was shared with this Commission. Is that  
23 not correct?

24 CHAIR JAMES: The model.

25 DR. KELLY: Actually what was sent was a format, a  
26 format of the types of questions that are asked in the audit. We  
27 did receive that, and I think the thinking was, we will show you  
28 the types of things that are -- the categories that are included

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1 in the audit, but we never received any information that was in  
2 fact sent in as a result of the audit.

3 COMMISSIONER MOORE: -- blanked out.

4 DR. KELLY: Right.

5 COMMISSIONER LOESCHER: I would like to ask Mr. Hogan  
6 to follow through with the question that I had asked, which may  
7 get to the answer that we have been working with. If you could  
8 follow that colloquy through about what you get reported, and  
9 then how --what the level of the information is, and then the  
10 interpolation of the information in the BIA band process.

11 MR. HOGAN: Okay, the -- I was attempting to explain  
12 the process of the annual audits that are to be furnished to our  
13 agency. We get those.

14 In the early years, and let me back up, an audit is  
15 something that is very familiar to the tribal process. Getting  
16 all of these federal dollars, I hate to see them be called public  
17 assistance or subsidies, they are dollars that the tribes  
18 bargained for.

19 But in any event, it is very common, and a very usual  
20 practice for an audit to be done annually for federal tribal  
21 related programs and so forth.

22 So when we were getting these initial audits, we didn't  
23 just get the gaming audit, we got the whole tribal audit, and one  
24 section of that had to do with their gaming operation, because  
25 they might have had a housing program, and so forth, and these  
26 were all there.

27 And so when we got that whole package we could see  
28 where those dollars went within the tribal government, and if

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1 they were used for these limited purposes that are specified in  
2 the Indian Gaming Regulatory Act.

3 Of late, as the gaming operations become more  
4 specific, more expanded, we are getting now the audits, I think  
5 more correctly what was envisioned under the Act, that just talks  
6 about what happened at the gaming operation.

7 However, the Bureau of Indian Affairs, a sister federal  
8 agency, continues to get to get these annual federal tribal  
9 audits that show expenditures of tribal revenues.

10 Now, if you had laid both of those side by side, you  
11 could probably get a better handle on just where these dollars  
12 went. However, I think that NIGC can do a better job, and I  
13 think we will do a better job with this increased staff and  
14 support that we have, of tracking, tracing those dollars to make  
15 sure that they are utilized for the limited purposes permitted  
16 under the Indian Gaming Regulatory Act.

17 And, of course, that includes per capita allocation  
18 programs, and those may only be done if and when the Secretary of  
19 the Interior approves the plan that the tribe submits.

20 We met with BIA last week, they are in the final stages  
21 of revising their regulations with respect to individual per  
22 capita allocation plans, and so I think together with those new  
23 regulations, our additional resources, and perhaps coordinating,  
24 looking at the tribal audit, as well as just the gaming audit, at  
25 least we can get a better handle on that.

26 That doesn't solve or address the problem of who we can  
27 release that to, we are still bound by our interpretation, so  
28 far, of how restricted we are with respect to that information.

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1 COMMISSIONER BIBLE: But in terms of that information,  
2 what you have then is the scope of audit that just deals with the  
3 gaming activity as an enterprise activity, you don't show the  
4 revenue of the gaming enterprise, don't show the expenses of the  
5 gaming enterprise, and then there apparently is a transfer to the  
6 general tribal, some of the tribal account, and that information  
7 you have?

8 MR. HOGAN: That is accurate.

9 COMMISSIONER BIBLE: And then the BIA has an audited  
10 statement that shows the transfer coming in, and the disbursement  
11 going out, as to how it is being expended within the tribal  
12 government?

13 MR. HOGAN: That is generally my perception. I'm not  
14 as expert in the full nature and scope of the BIA information,  
15 but that is, generally, I think a fair way to say it.

16 COMMISSIONER BIBLE: So you people really have not put  
17 the two audits together, and have knowledge as to both the monies  
18 coming in, and where they are going out?

19 MR. HOGAN: No, we have not.

20 COMMISSIONER BIBLE: But you think you are going to be  
21 doing a better job in the future of tracking tribal gaming  
22 monies?

23 MR. HOGAN: Yes, we just finished some, what we call  
24 self-regulation regulations, and that is one of the criteria, to  
25 move in that direction, that more specific information about the  
26 utilization of those dollars would have to be provided to the  
27 National Indian Gaming Commission.

28 COMMISSIONER BIBLE: Now, in class III gaming, and  
29 members of the Commission know that class III is casino type

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1 gaming, my recollection of the Act is that you, at least in terms  
2 of the Act, had somewhat limited involvement in class III  
3 activities. I think you have now ratcheted it up somewhat with  
4 your internal control regulations that you, I think, promulgated  
5 under the provisions that allow you to track revenues that are  
6 dispersed to tribal governments, or something of that nature.

7 But as I look at class III activities across the  
8 country, and those are primarily the casino activities, the  
9 primary responsibility is placed upon the compacting process,  
10 upon the state and tribal governments coming to some form of  
11 agreement, to make an agreement amongst themselves as to how that  
12 regulation is going to occur.

13 Would that be correct?

14 MR. HOGAN: Well, that is what you would think, and yes  
15 it is correct. That is, the Indian Gaming Regulatory Act says  
16 class II gaming will be regulated by the tribes, and the National  
17 Indian Gaming Commission. Class III gaming will be regulated  
18 pursuant to compacts negotiated between the tribes and the state.

19 However, it says later on, the Chairman of the National  
20 Indian Gaming Commission shall have the responsibility and the  
21 authority to issue notices of violation, impose fines, or issue  
22 closure orders when there is a violation of the Indian Gaming  
23 Regulatory Act, the regulations of the National Indian Gaming  
24 Commission, or the tribal gaming ordinance that the Chairman has  
25 reviewed and approved, that permits the tribe to engage in gaming  
26 in the first place.

27 So up front here, in bold print it says, the  
28 regulation will be done by the tribe and the state. Down in the

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1 fine print it says, but NIGC, if there is a violation, you are  
2 supposed to go out there and take enforcement action.

3 So as a practical matter, the way it works is, the  
4 tribe and the state, sometimes with great state involvement,  
5 sometimes with minimal state involvement -- pretty minimal in  
6 some instances.

7 But those folks are on the ground, all day, every day,  
8 365 days a year.

9 COMMISSIONER BIBLE: Those folks being who?

10 MR. HOGAN: Pardon me?

11 COMMISSIONER BIBLE: Who are those folks?

12 MR. HOGAN: The creature of the tribal state compact,  
13 which may be all tribal, or mostly tribal.

14 COMMISSIONER BIBLE: Or the state.

15 MR. HOGAN: Right. And so they do it out there on the  
16 ground, but we have this oversight responsibility. And if and  
17 when they, or somebody else, brings to our attention that there  
18 is a violation of the Act, or their tribal gaming ordinance, we  
19 are out there investigating that to see if we ought to issue an  
20 order to close that facility, or to impose a fine.

21 COMMISSIONER BIBLE: Do you do that frequently, do you  
22 fine facilities for violating class III regulation --.

23 MR. HOGAN: Yes, we have, the list that I sent Chair  
24 James includes a list of all those enforcement actions we have  
25 taken.

26 COMMISSIONER LOESCHER: Madam Chair, one last thing,  
27 and I think the point has been made by this last little colloquy  
28 here, and I would like to sort of ask Mr. Hogan to highlight it,  
29 is that the statute basically puts the regulatory scheme between

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1 the state and the tribe, that is the first instance where the  
2 regulation occurs in governance between the state and the tribal  
3 government.

4 The tribe has its own governance over gaming, then  
5 there is this compact. And for this casino gaming business, that  
6 is a matter of negotiation between states and tribes. And those  
7 are different from place to place across America.

8 And so when we are kind of throwing rocks here about  
9 the state of regulatory oversight, it has been a matter that has  
10 been bargained between the states and the tribes.

11 So -- within the compact structure. What I'm saying is  
12 that, you know, we are kind of throwing rocks, or complaining to  
13 the wrong place, maybe, when we are complaining against the  
14 NIGC. We probably need to focus on this relationship that goes  
15 on between the state and the tribes, and the standardization of  
16 these kinds of regulatory schemes across America.

17 But I really wanted to emphasize where the burden is  
18 placed.

19 Now, the NIGC has worked with the tribes to develop  
20 these minimum standards, and we are beginning to see other things  
21 that are occurring from the NIGC's role with tribes. And I think  
22 that is only going to work to elevate the regulatory schemes and  
23 standards across America.

24 But I wanted to ask Mr. Hogan, is my perception correct  
25 about where it all starts?

26 MR. HOGAN: You have said it very eloquently, yes. The  
27 NIGC has to approve the ordinance that the tribe is going to  
28 utilize to operate gaming, and we have a check list of things

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1 that they must do, and require, including background  
2 investigations, and regulation, and so forth.

3 But as long as they do what is required there, they can  
4 sit down with the state and place as much or as little of that  
5 responsibility in one camp or the other, and do it how they  
6 agree. As long as they comply with their ordinance, their Act,  
7 you really need to look at that compact they have negotiated to  
8 analyze or size up the situation.

9 CHAIR JAMES: Can I just finish up one thing, Leo,  
10 before we come over there?

11 Is it my understanding that it is not the intention of  
12 the National Indian Gaming Commission to respond to the request  
13 of this Commission for the audit information?

14 MR. HOGAN: No, I think our response is, sorry, we  
15 can't let you have that.

16 COMMISSIONER MOORE: Who said?

17 MR. HOGAN: The Indian Gaming Regulatory Act.

18 COMMISSIONER MOORE: Was that an act of Congress?

19 MR. HOGAN: Yes.

20 COMMISSIONER MOORE: Can that be changed, can we change  
21 things?

22 MR. HOGAN: Absolutely, the Congress -- .

23 COMMISSIONER MOORE: That might be a good  
24 recommendation.

25 MR. HOGAN: That may well be the case.

26 CHAIR JAMES: And that is subject to whose  
27 interpretation, that that particular regulatory act states that  
28 you cannot give this federal Commission that information?

1 MR. HOGAN: That is the interpretation of our Chairman,  
2 and our office of General Counsel.

3 CHAIR JAMES: Okay.

4 COMMISSIONER BIBLE: Is that a written opinion of your  
5 General Counsel?

6 MR. HOGAN: If it isn't it can be.

7 COMMISSIONER BIBLE: Has it been shared with our staff?

8 MR. HOGAN: I was not party to this dialogue.

9 DR. KELLY: I don't think the opinion has been shared,  
10 but that position was certainly stated clearly in the last letter  
11 we received.

12 COMMISSIONER BIBLE: And they may not share the opinion  
13 because of attorney client privilege, I guess.

14 CHAIR JAMES: If that is indeed the official position  
15 of the Commission, then I would like to go ahead and request that  
16 you make it very clear that it is your position that you will not  
17 provide that information to this Commission.

18 MR. HOGAN: All right, we will clarify that so that  
19 there isn't any doubt.

20 CHAIR JAMES: I would also -- yes?

21 COMMISSIONER BIBLE: Are you finished with this  
22 portion?

23 CHAIR JAMES: No. I would also like to know what is  
24 the sense of the Commission if, in fact, the National Indian  
25 Gaming Commission refuses to give that information to our  
26 Commission. I would like to know your sense of that.

27 COMMISSIONER BIBLE: Well, at least as I read the  
28 information that is being described, it only answers half the  
29 question, because it is only going to show the revenue portion of

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1 the, and the expense portion of the casino operation itself, it  
2 is not going to talk about the disbursements.

3 I think we also need to make a request to BIA for  
4 similar type of information, and I think we ought to pursue the  
5 information fairly aggressively in terms of getting it. We have  
6 that casino questionnaire out, and I don't know if they are going  
7 to respond to the research committee's, or subcommittee's  
8 questionnaire or not, on an individual tribal casino basis.

9 MR. HILL: Madam Chair? In that vein I have a concern  
10 as representing the nations here about the ACIR request. We met  
11 with them in July, and that request did not go out until  
12 December. So are you going to have --.

13 CHAIR JAMES: I'm sorry, I'm --.

14 MR. HILL: The request did not, from the ACIR did not  
15 go out. We met with them in July, and pointed them in certain  
16 directions, supplied them with information, and then the request  
17 for this letter, this questionnaire did not go out until  
18 December.

19 So is the Commission going to be able to obtain enough  
20 information to make an informed decision by the time your report  
21 is due, is the question.

22 CHAIR JAMES: That is up to this Commission to decide.

23 COMMISSIONER MCCARTHY: We are in a different area now.  
24 The ACIR has nothing to do with this questionnaire.

25 COMMISSIONER DOBSON: Madam Chair, would someone -- .

26 MR. HILL: I'm corrected.

27 COMMISSIONER MCCARTHY: This casino questionnaire went  
28 to tribal and non-tribal casinos.

29 MR. HILL: When was it mailed?

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1 COMMISSIONER MCCARTHY: It was mailed only a couple of  
2 weeks ago, so we appreciate the fact that it is coming late to  
3 you, and I think we allowed in the cover letter, we asked if you  
4 could please return it within 30 days.

5 A similar questionnaire, as we also cited in the cover  
6 letter, was sent out to lottery regulators several months ago.  
7 And in some instances they took longer than 30 days. But we  
8 worked with them to bring all that information in.

9 And the preparation of that, as I told you earlier, the  
10 research subcommittee consulted with at least a half a dozen  
11 people in casino management, including tribal casino management.

12 So the questionnaire, we think, we have gone to great  
13 lengths to try to make that a very fair question, to obtain  
14 information that the Commission will need in the writing of its  
15 final report.

16 Now, that is entirely separate from the cataloguing of  
17 all laws, federal, state, and tribal, that the ACIR is doing  
18 under separate contract for this Commission.

19 CHAIR JAMES: Which is separate from the audit  
20 information.

21 COMMISSIONER MCCARTHY: It is separate, again, from  
22 what the Chair is pursuing.

23 CHAIR JAMES: So there is three -- .

24 MR. HILL: So you are sure, yourselves, that you are  
25 going to have the appropriate database to make an informed  
26 decision?

27 CHAIR JAMES: That is something that this Commission is  
28 very aware of, and that is something that we are working very

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1 diligently to get that information in. But that is our problem,  
2 not yours.

3 At this point your problem is -- .

4 MR. HOGAN: I want to make sure you have the -- .

5 CHAIR JAMES: Let me ask Mr. Hogan a question, here.  
6 Mr. Hogan, I need to know if you will, how quickly you can get us  
7 your response from the NIGC in terms of your ability, or  
8 willingness, to get us that audit information, how quickly could  
9 that happen?

10 MR. HOGAN: I'm cautiously optimistic that we could get  
11 it to you this week.

12 CHAIR JAMES: That you could tell us no fairly quickly?

13 MR. HOGAN: Yes. Tomorrow is the confirmation hearing  
14 of Chairman Deer, who situation currently a recess appointee,  
15 before the Senate Indian Affairs Committee, and then the next day  
16 we are going to be in Minneapolis for training on a minimal  
17 internal control centers, and on Friday we will be in Milwaukee.  
18 But I think we can grind that letter out in the meantime.

19 COMMISSIONER MCCARTHY: As I listen to Mr. Bible's  
20 questions lately about the, and the answers trying to define  
21 somewhat separate responsibilities for the accounting processes  
22 between your agency and the BIA, does the Chair feel, and maybe  
23 our Executive Director may want to respond to this, that the  
24 original question we sent is appropriately and clearly framed as  
25 to the information we are seeking from not just the one agency,  
26 but both agencies?

27 DR. KELLY: If I could, I think it was quite clear, the  
28 request that was sent to the NIGC. Indeed, we did not send a  
29 similar request to the BIA, and we could do so.

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1 But I also think it is quite clear what their position  
2 is, already. I think we have the response already that is fairly  
3 clear.

4 COMMISSIONER BIBLE: And I would just speculate that  
5 they probably never asked for the information from the BIA  
6 because they had not had the opportunity to analyze and review  
7 the information the NIGC has, and come to the conclusion that  
8 somebody else has another piece of the information.

9 CHAIR JAMES: I am going to suggest that when we move  
10 back into a more formal proceeding, that we look at some action  
11 that the Commission may want to take on both the BIA and the NIGC  
12 request, at that time.

13 We are in an informal mood right now, and I want to  
14 keep it that way at least through lunch time.

15 COMMISSIONER MCCARTHY: Now may I get to the -- .

16 CHAIR JAMES: You certainly may, and then I'm going to  
17 get to Commissioner Dobson.

18 COMMISSIONER MCCARTHY: This is not on jurisdictional  
19 territory, and I am not seen either as a promoter of gambling in  
20 the United States, nor really as a demoter either, but rather  
21 trying to look at it from the public point of view and see what  
22 kind of information is available for all officials that have to  
23 make judgements on initiating, or expanding, or terminating  
24 gambling to have in hand.

25 So my question now, to you Mr. Hogan, and Mr. Hill, and  
26 Mr. Rogers with Mr. Hill, goes to -- is prompted, we don't need  
27 to get into a long discussion of this now, but let me lay it out  
28 there.

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1           You are about to hire many more staff for your agency,  
2   it has been a long time coming, and I don't know what kind of  
3   recruitment problems you are going to have, and I know if they  
4   are young Native American men and women who are qualified for all  
5   of the positions that would be necessary for you to fill, what  
6   the pool is of available people out there.

7           Maybe it is quite adequate already. I don't know how  
8   many Mr. Rogers are out there with the kind of specialties that  
9   would be so important for your agency to fulfill its  
10   responsibilities.

11          But beyond that, it occurred to me that maybe one  
12   subject we ought to be talking about is how we enter into, and  
13   maybe it is a joint scholarship program from the federal  
14   government and tribal governments, to try to train a number of  
15   young Native American men and women to fulfill the range of  
16   responsibilities that come in to self governance, and all of the  
17   complexities that are there.

18          I really have no knowledge of how many qualified people  
19   there are. I assume that an outfit like Foxwoods, it has plenty  
20   of money, and it is out hiring the best that is available. I  
21   don't know how many of them are non-Native American people under  
22   contract.

23          I would guess maybe it is somewhat limited. But I  
24   don't know what the pool is out there. And I think one thing,  
25   since we assume that Indian tribal gambling will be growing,  
26   there will be an increasing demand for a supply of qualified  
27   people to be in the expert positions advising the governance  
28   committees, who are going to run all of these.

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1           It may go to the issue of trust and reliability of  
2 information, and some of the other things we've been talking  
3 about here. I just think it is something we ought to discuss and  
4 pursue as we go on.

5           MR. HOGAN: If I might just comment on that? First of  
6 all, unlike the Bureau of Indian Affairs, we don't have an Indian  
7 preference policy, or we can't hire on the basis of tribal  
8 affiliation.

9           However, we have hired -- well, with the exception of  
10 two members of the National Indian Gaming Commission have to be  
11 Indian, that is all it says, I'm one of them.

12           But we find that those Indians that we have hired have  
13 better insight into the way things really work at the tribal  
14 level -- .

15           COMMISSIONER MCCARTHY: Which is what I had in mind.

16           MR. HOGAN: Yes, right. But it is a dog eat dog  
17 business. We hired from the Nevada Gaming Commission several of  
18 our employees, as well as we have taken them from tribal gaming..

19           So you have kind of like 180 different academies out  
20 there with each of these tribal gaming commissions. Of course,  
21 they have to get their people from someplace. But it is an  
22 excellent point, and -- .

23           COMMISSIONER MCCARTHY: I was aware that it would be in  
24 violation of federal law for you to hire only Native American  
25 staffers. On the other hand, there ought to be some  
26 representation among all the employees you will be hiring, of  
27 Native American people.

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1           So maybe in the pooling of thoughts and sensitivities  
2 and ideas within your staff, there could be an elevation of  
3 perspectives of everybody that was on your staff.

4           I really more had in mind who is out there, or who  
5 might be trained to be out there for all of the tribes that have  
6 gambling operations around the country.

7           MR. HOGAN: Well, it has changed dramatically in the  
8 last five years, the numbers are growing. And as is the  
9 sophistication of the performance of the tribal gaming  
10 commissions, and the operations themselves.

11           COMMISSIONER MCCARTHY: Well, then non-Native American  
12 gambling operations have done quite a bit. The University of  
13 Nevada has extensive programs now to train people to be in the  
14 casino business. Other states have now had their primary  
15 educational institutions initiate a wide range of programs.

16           And, of course, you can recruit from those areas also.  
17 But, obviously, as long as this deep distrust from historical  
18 events continues to occur, unless you have, unless the native  
19 tribes have some access to young American men and women in the  
20 blend of all of this, this is just going to be a very  
21 --continuingly a very different transition.

22           MR. ROGERS: Expanding upon what Chairman Hill had  
23 referenced with regard to the cataloguing by ACIR.

24           What our concern was, Commissioners, was the fact that  
25 we did meet with ACIR on July the 20th of this past year. It is  
26 our concern, and referencing the record, once again, not  
27 anecdotal, I read the transcript, or took the notes from Mr.  
28 Wilhelm's remarks in Seattle, his concern about the slap-dash  
29 work of ACIR, and the compilation of their data.

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1 And you had just referenced, Chairwoman James, that is  
2 your problem, not our problem. But -- .

3 CHAIR JAMES: Not that -- .

4 MR. ROGERS: No, let me finish.

5 CHAIR JAMES: -- the slap-dash is not --that is  
6 everybody's problem, the timing element of how we are going to  
7 get this done on time.

8 No, as a point of clarification I think that is very  
9 important. We are concerned about the integrity and the quality  
10 of the data that comes in to us as well, and I wouldn't want to  
11 leave you with that impression.

12 MR. ROGERS: What concerns us so much, Madam  
13 Chairwoman, is as Commissioner McCarthy just enumerated, is the  
14 trust and reliability of whatever we receive.

15 And what we tried to point out to ACIR was the cultural  
16 nuances of requesting data from tribes. The Secretary of Commerce  
17 Daley the other day made some remarks imploring Native Americans  
18 to respond to the census that is coming out, because historically  
19 we have been undercounted, and not as participatory in the census  
20 counting as other segments of society by a factor of almost 300  
21 percent.

22 And what concerns us is you need to make an informed --  
23 you have to have an informed process, and informed decision  
24 making process. What concerns us so much is that you don't have  
25 that adequate database to work from given the fact, like I said,  
26 we met with them in July, their request went out just a little  
27 while ago.

28 And you have to write, and I know the Indian  
29 subcommittee has to make the recommendations, and we will be

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1 going over that, and you have to have your report to the GPO by  
2 May 20th. And that database won't be available to you until  
3 March, middle of March, end of March.

4 Your window period is so short to get the data, and see  
5 that it is reliable, and if there is integrity to the data, can  
6 you trust the data. And then make a decision based upon that.

7 And if you come out to decision making that is adverse  
8 to us, that will impact us. So your problem becomes our problem.  
9 And that is what concerns us.

10 COMMISSIONER MOORE: Could I make one statement? I'm a  
11 physician, and you come to see me, and I have to make a decision  
12 that day, you want to know what is wrong with you. But I may not  
13 be able to make a decision that day.

14 I have reference books, but I can't find anything in  
15 the reference books, so I have to do it on my own, bite the  
16 bullet. I go to an attorney and hear all of this, and you might  
17 tell me, well I have to research that, come back in three weeks.  
18 Man, I need that answer that day.

19 But you people want me to come back and then after you  
20 get it you want to get another opinion, and then appeal to some  
21 Court.

22 This Commission has heard a lot of information, we have  
23 asked for a lot of information. Whether I get any information  
24 from you people or not, I don't need any information to suggest  
25 maybe that the Act might be changed to give us this information,  
26 or to give other people in the future this information.

27 IGRA was born, I think, by Congress signing the law by  
28 the President. Is that correct? This Commission was passed by

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1 Congress, signed into law by the President. One of them was  
2 Reagan, I believe, one of them was Clinton.

3 But that makes no difference. This Commission has some  
4 standings. This Commission ought to have standings with your  
5 Act. And if we ask for information we need it. If we don't get  
6 this information you can bet your bottom dollar there will be a  
7 report, and it will be in that report. We are not going to --

8 DR. KELLY: Could I just address the ACIR issue that  
9 was raised? Just quickly. They have assured us that they will  
10 be able to produce what we need from them as long as there is  
11 reasonable cooperation from the -- from the various tribes that  
12 have been polled.

13 COMMISSIONER DOBSON: Madam Chair I think my question  
14 is now relevant. For a while I thought it might not be.

15 Just a point of clarification. Remind me of what the  
16 statute prescribes for us in terms of our responsibility to  
17 examine the Indian tribal gambling. I have read it, but remind me  
18 again of the specificity of that statute.

19 COMMISSIONER MOORE: Everything and it says including  
20 tribal gaming, everything that it does for everyone else, and it  
21 says including tribal gaming.

22 COMMISSIONER DOBSON: The implication is that we need  
23 whatever information we can possibly get.

24 CHAIR JAMES: Right.

25 COMMISSIONER DOBSON: In order to make those -- that  
26 final report.

27 COMMISSIONER LEONE: I think what it comes down to,  
28 Jim, is we have to opine on these matters, which regardless of

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1 which paradigm you use involves complex inter-governmental  
2 questions that are evolving rapidly.

3 And we can opine on the basis of less information or  
4 more information. Some of the less information will be due to  
5 our own limitation, some fit will be due to the limitations of  
6 our vendors, and some may well be due to the fact that people  
7 won't give us information.

8 But we don't, I think, fulfill our responsibility if we  
9 don't make every attempt to get what information we can, and make  
10 as informed a judgement as we can make.

11 Other people have the right to decide that they want to  
12 resist that, and that we would be better off, we would be happier  
13 if our judgements were less informed. That is where we are on  
14 this, and I know that we can beat it to death.

15 I will express my disappointment, and second what Mr.  
16 Lanni said. I think viewing the Commission as an enemy doesn't  
17 do anybody any good.

18 CHAIR JAMES: And let me just say this too, that there  
19 are many options that are open and available to the Commission in  
20 terms of its recommendations.

21 One of the things that Congress, and the President, and  
22 the American people will be looking for us to say is what  
23 additional information, what additional entities, what additional  
24 laws are required.

25 So if we don't get the information, and we don't have  
26 it available to us in order to do this then it is open to us to  
27 suggest other avenues by which we can get that.

28 I want to say, and we are moving close towards the  
29 12:15 deadline, and I anything to thank you all for your

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1 participation, and for helping us work through some very thorny  
2 and some very difficult issues.

3 And while I know that from your perspective, having  
4 some specific questions in writing submitted that you can respond  
5 to may be the easier way to proceed. For us, as a Commission, it  
6 is extremely helpful to have you here, and to have the dialogue,  
7 and to have the back and forth, and the exchange of ideas.

8 And it is very important to be able to lay an idea on  
9 the table, and to look at it from several different perspectives.  
10 And so the process, I believe, is a good one, and a very helpful  
11 one for us as Commissioners.

12 And yes we will continue, I think to submit if we have  
13 any additional information, or requests, and we will continue to  
14 do that.

15 But I do want to thank you for being here today and  
16 engaging in this kind of dialogue.

17 MR. HILL: Can I ask a question?

18 CHAIR JAMES: Unfortunately I am going to move on right  
19 now, Rick, and I want to close on one final thing.

20 MR. HILL: It is important.

21 CHAIR JAMES: There is another issue that has come up  
22 several times this morning, and it is the issue of trust, and it  
23 is the issue of whether or not-- and that is why I asked the  
24 question, you know, I realize that there is a great deal, a lack  
25 of trust that exists, and I was trying to pinpoint that.

26 Is it distrust of the government, or the American  
27 people, or of this Commission, or individuals on the Commission,  
28 and I appreciate the response that you gave, and that was very  
29 helpful.

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1 But I would remind everyone who is involved in this  
2 process that we have been given a charge, by Congress, and  
3 whether or not an individual chooses, or an entity chooses to  
4 give us information based on their trust of this Commission is,  
5 at some point, irrelevant, because of the task that we have been  
6 given.

7 And I just, for the public record, want to reiterate  
8 what each of us as Commissioners has been charged with in terms  
9 of how we handle information.

10 Any information coming to any one of us in the course  
11 of our official duties, or by reason of any examination or  
12 investigation made by, or return, report, or record, made to or  
13 filed with such a department or agency, or office, or an  
14 employee, thereof which information concerns or relates to the  
15 trade secrets, processes, operations, style of work, or  
16 apparatus, or to the identity, confidential, statistical data,  
17 amount or source of any income, profits losses or expenditures of  
18 any person, firm, partnership, corporation, or association, or  
19 permits any income return, or copy thereof, or any book  
20 containing any abstract, or particulars thereof to be seen or  
21 examined by any person, except as provided by law, shall be fined  
22 under this title.

23 We are legally obligated to handle proprietary  
24 information that way. And so it may be that you may not trust,  
25 or anyone, any entity, and we are asking for a lot of information  
26 to come in from casinos, to come in from lotteries, to come in  
27 from tribes.

28 And it is the responsibility that each of us has taken  
29 on in our official capacity to handle that information

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1 appropriately. And for us to get our job done it is absolutely  
2 essential that we have access to that information.

3 And for those who have not been following these  
4 deliberations that carefully, I just wanted to make sure that  
5 everyone understands our responsibility as a Commission, and how  
6 he handle that information.

7 And so we are very aware of it, each of us has signed  
8 this particular document, and it was the duty of the Executive  
9 Director to make sure that every Commissioner, and every staff  
10 person working with the Commission understands our duty and our  
11 responsibility that has been given us by Congress to conduct  
12 these hearings and these findings.

13 With that -- .

14 MR. HILL: Madam Chair? I just have one question.

15 CHAIR JAMES: One question, certainly.

16 MR. HILL: Do you have a complete set of records for  
17 all the subcommittee hearings? The Indian subcommittee hearings?  
18 .

19 CHAIR JAMES: The question is, do we have a complete  
20 set of records for subcommittee hearings, and I don't know that  
21 is a question, I would have to -- well, I think it is a relevant  
22 question for all.

23 DR. KELLY: No, we are waiting on, in fact, some  
24 information from NIGA, which was offered to us for one of those  
25 meetings. Other than that, I believe, we have a complete record.

26 COMMISSIONER MCCARTHY: Transcript form?

27 DR. KELLY: Yes.

28 CHAIR JAMES: With that I'm going to call the meeting  
29 into recess and we are going to go to lunch. Thank you.

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